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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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OSTRAGER CHONG FLAHERTY & BROITMAN PC 250 PARK AVENUE, SUITE 825 NEW YORK, NY 10177			PATEL, DHIRUBHAI R	
			ART UNIT	PAPER NUMBER
			2831	

DATE MAILED: 08/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/729,142

Applicant(s)

MARCOU ET AL.

Examiner

DHIRU R PATEL

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) 43 is/are allowed.
6) ☒ Claim(s) 1-13, 27, 30-31, 34-35, 44 is/are rejected.
7) ☒ Claim(s) 14-26, 28, 29, 32, 33, 36-42 and 45-47 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

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Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1- 3 , 5- 8, 11, and 31 are rejected under 35 U.S.C. § 102(e) as being anticipated by Lopez Sr et al (6,649,838).

Lopez Sr et al disclose:

Regarding claim 1, a weatherproof electrical enclosure comprising:

a base 10 (see figs 1-2, column 4 lines 5-15) ; a cover 40 (see figs 1-2, column 4 lines 5-15); and a first movable hinge clip 50 (see figs 1-2) for pivotably connecting the base to the cover (see figs 1-2, column 4 lines 5-10).

Regarding claim 2, wherein the enclosure is dimensioned for use with a single gang receptacle 20 (see fig 1).

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Regarding claim 3, wherein the enclosure is dimensioned for use with a double gang receptacle 20 (see fig 1).

Regarding claims 5 and 6, further comprising a gasket 180 (see fig 2) for promoting a weatherproof seal between the base and a support structure (see column 4 lines 35-40).

With respect to claim 6, see fig 2.

Regarding claims 7 and 11, wherein the base 10 comprises a top base wall, a bottom base wall, two side base walls, and a rear wall, wherein the top, bottom and side base walls define a base opening and further, wherein the cover 40 comprises a front cover wall, a top cover wall, a bottom cover wall and two side cover walls, wherein the top, bottom and side cover walls define a cover opening (see figs 1-2). With respect to claim 11 see fig1.

Regarding claim 8, further comprising at least one cable opening 120 disposed on the bottom cover wall (see fig 2).

Regarding claim 31, a base 10 mountable on a support structure (see fig 1), the base comprising a top base wall, a bottom base wall, two side base walls, and a rear wall (see fig 1); an adjustable-position cover 40 comprising a front cover wall, a top cover wall, a bottom wall and two side cover walls (see fig 2); and a movable hinge clip 50 for pivotably connecting the base to the cover (see fig 2).

2. Claim 44 is rejected under 35 U.S.C. § 102(b) as being anticipated by Lippa (5,965,844).

Lippa disclose:

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Regarding claim 44, a cover plate 10 (see fig 1) suitable for use with a weatherproof electrical enclosure, the cover plate comprising: an upper recess 26 disposed on a top corner; a first horizontally elongated mounting hole 26 disposed on an opposite top corner (see fig 1); a lower recess 26 disposed on a bottom corner diagonally opposite from the upper corner where the upper recess is disposed; and a second horizontally elongated mounting hole 26 disposed on an opposite bottom corner (see fig 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103 (a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time

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a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

3. Claim 34 is rejected under 35 U.S.C. § 103 (a) as being unpatentable over Lopez Sr et al (6,649,838).

Regarding claim 34, the assembly of Lopez Sr et al disclose all the features of the claimed invention as shown above, including a first cable opening positioned on the bottom cover wall, but fails to disclose a second cable opening positioned on a side cover wall. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide any number of cable opening , since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. St. Regis Paper Co. v. Bemis Co., 193 USPQ 8.

4. Claim 4 is rejected under 35 U.S.C. § 103 (a) as being unpatentable over Lopez Sr et al (6,649,838) in view of Ranalli (4,469,238).

Regarding claim 4, the assembly of Lopez Sr et al disclose all the features of the claimed invention as shown above, but fails to disclose the cover is transparent . Ranalli teaches the use of a cover 8 with planar base containing a transparent viewing area (see figs 1-2, column 4 lines 62-68) in order to permit a user to readily view the state of the switches even in the closed position of the cover (see column 2 lines 25-32). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the assembly of Lopez Sr et al with said cover being a transparent as taught by Ranalli in

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order to permit a user to readily view the state of the switches or other electrical devices being mounted in the base 10 even in the closed position of the cover .

5. Claims 9-10, 12-13, and 35 are rejected under 35 U.S.C. § 103 (a) as being unpatentable over Lopez Sr et al (6,649,838) in view of Sellinger (4,266,683).

Regarding claims 9-10,12-13 and 35, the assembly of Lopez Sr et al disclose all the features of the claimed invention as shown above, but fails to disclose at least one cable opening being covered by a removable cable cap (for claims 9 and 12), and at least one cable opening being shielded by a hood (for claims 10,13 and 35). Sellinger teaches the use of a cable opening 18 being covered by a removable cable cap 22 or hood 22 (see fig 1, column 2 lines 10-17) in order to seal any mounting hole not being used (see column 2 lines 64-68). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the assembly of Lopez Sr et al with a removable cable cap or hood as claimed in claims 9-10,12-13 and 35 as taught by Sellinger in order to seal any mounting hole not being used.

6. Claim 27 is rejected under 35 U.S.C. § 103 (a) as being unpatentable over Lopez Sr et al (6,649,838) in view of Lipka (5,965,844).

Regarding claim 27, the assembly of Lopez Sr et al disclose all the features of the claimed invention as shown above, but fails to disclose a cover plate, the cover plate comprising: an upper recess disposed on a top corner: a first horizontally elongated mounting hole disposed on an opposite top corner; a lower recess disposed on a bottom corner diagonally opposite from the upper corner where the upper recess is disposed; and a second

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horizontally elongated mounting hole disposed on an opposite bottom corner. Lippa teaches the use of a cover plate 10, the cover plate comprising:

an upper recess disposed on a top corner: a first horizontally elongated mounting hole disposed on an opposite top corner; a lower recess disposed on a bottom corner diagonally opposite from the upper corner where the upper recess is disposed; and a second horizontally elongated mounting hole disposed on an opposite bottom corner (see fig 1), in order to provide adjustable connection to mount said cover plate with an electrical box 28 using elongated openings 26 (see column 3 lines 45-51). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the assembly of Lopez Sr et al with a cover plate, the cover plate comprising:

an upper recess disposed on a top corner: a first horizontally elongated mounting hole disposed on an opposite top corner; a lower recess disposed on a bottom corner diagonally opposite from the upper corner where the upper recess is disposed; and a second horizontally elongated mounting hole disposed on an opposite bottom corner as taught by Lippa in order to provide adjustable connection using elongated openings to mount said cover plate with an electrical box.

7. Claim 30 is rejected under 35 U.S.C. § 103 (a) as being unpatentable over Lopez Sr et al (6,649,838) in view of Lippa (5,965,844) as applied to claim 27 above, and further in view of Shotey et al (5,763,831).

The modified assembly of Lopez Sr et al shows all of the claimed features as shown above, but fails to disclose a set of removable concentric ribs and removable of the concentric rib

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increases the size of the opening. Shotey teach the use of removable concentric ribs 112, 113 increases a size of the opening(see fig 12) in order to provide an aperture to accommodate a specific device (see column 3 lines 25-32). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified assembly of Lopez Sr et al with a set of removable concentric ribs as taught by Shotey in order to provide an aperture to accommodate a specific device.

Allowable Subject Matter

8. Claims 14-26, 28-29, 32-33, 36-42 and 45-47 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claims 43 is allowed.

The following is a statement of reasons for the indication of allowable subject matter:

The primary reason for the indication of the allowability of claims 14-26, 28-29, 32-33, 36-43, 45-47 are the inclusion therein, in combination as currently claimed, of the limitation of an L-shaped cover flange extending perpendicular to and outwards from rear edges of the top, bottom and side cover walls, wherein a distal end of the cover flange extends rearwards- and further, wherein the cover flange is dimensioned to complement the base lip to form a waterproof seal when the cover is in a closed position (for claims 14-22), a hook assembly comprising an L-shaped latch flange extending outwards from an outer surface of the cover adjacent to the cover opening, wherein the latch flange extends outwards from the cover at a distance sufficient to allow the distal end of the latch flange to engage the base tab when the

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cover is in the closed position (for claims 23-24), a hook assembly comprising a latch flange extending outwards from an outer surface of the cover adjacent to the cover opening and a locking clip pivotably mounted along a distal end of the latch flange perpendicular to the latch flange (for claims 25-26), a first, second, third and fourth corner rib, wherein the first and second corner ribs are respectively positioned on opposite ends of the top of the first aperture rib and the third and fourth corner ribs are respectively positioned on opposite ends of the bottom of the second aperture rib and further, wherein removal of the center rib, aperture ribs, insert ribs, side ribs and corner ribs creates a second rectangular opening (for claims 28-29, 32-33, 45-47), an L-shaped cover flange extending perpendicular to and outwards from rear edges of the top, bottom and side cover walls, wherein a distal end of the cover flange extends rearwards and further, wherein the cover flange is dimensioned to complement the base lip to form a waterproof seal when the cover is in a closed position (for claims 36-40) , a hook assembly comprising a latch flange extending outwards from an outer surface of the cover adjacent to the cover opening and a locking clip pivotably mounted along a distal end of the latch flange perpendicular to the latch flange, wherein the latch flange extends from the cover at a distance sufficient to allow the locking clip to engage the base tab when the cover is in the closed position (for claims 41-42), the hinge clip comprising a first hook disposed at a top end of the base for attaching the top end of the hinge clip to the first or second mounting rail. and a second hook disposed at a bottom end of the hinge clip for attaching the bottom end of the hinge clip to the first or second hinge mounting (for claim 43).

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The previously listed limitation is neither disclosed nor taught by the prior art of record, alone or in combination.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Response to Arguments

11. Applicant's arguments filed 7/30/04 for claims 1-47 have been fully considered but they are not persuasive.

Applicant argues on page 15 that independent claims 1 and 31 both recite, "a first movable hinge clip for pivotably connecting the base to the cover". The term "movable hinge clip" means a clip that can be moved or positioned to allow the cover to pivot open either

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vertically or horizontally. The examiner respectfully disagrees because Lopez et al (6,649,838) disclosed that a base 10 (see figs 1-2, column 4 lines 5-15) ; a cover 40 (see figs 1-2, column 4 lines 5-15); and a first movable hinge clip 50 (see figs 1-2) for pivotably connecting the base to the cover (see figs 1-2, column 4 lines 5-10). With respect to the term "movable hinge clip" means a clip that can be moved or positioned to allow the cover to pivot open either vertically or horizontally, it is noted that either claim 1 or 31 does not claimed the term "movable hinge clip" means a clip that can be moved or positioned to allow the cover to pivot open either vertically or horizontally, but only claimed a movably hinge clip **FOR** pivotably connecting the base to the cover, and the assembly of Lopez et al meet the structural limitations and figures 1-2 clearly demonstrate **FOR** a first movable hinge clip . With respect to Applicant argues on page 16 that lopez hinge is permanent, the examiner respectfully disagrees because Lopez et al clearly disclosed that a flexible hinge (see column 2 line 57). With respect to Applicant argues on page 16 that Lopez does not disclose all of the elements recited in claims 1 and 31, the examiner respectfully disagrees and, it is believed that the rejection should be sustained.

With respect to Applicant argues on page 17 that Lipppa does not disclose all of the elements recited in claim 44 and , therefore does not anticipate claim 44. The examiner respectfully disagrees because Lipppa clearly disclosed the claimed subject matter of claim 44 as mentioned above and clearly disclosed that the cover plate 10 being adjusted on the electrical box 28 by moving the cover 10 and being secured to the outlet box 28 (see fig 5 ,

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column 4 lines 5-11), therefore, the cover 10 meet the structural limitation, also, any devices being mounted inside of the box 28 being protected by the cover 10.

With respect to Applicant argues on pages 18 and 19 that Lopez does not disclose a movable hinge clip as recited in claims 1 and 31. The examiner respectfully disagrees and since independent claims 1 and 31 are rejected, for the above reasons, it is believed that the rejection should be sustained. Further the Applicant argues on pages 17-19, for claims 34, 9-10, 12-13, 35 27 and 30, it has been held that the test for obviousness (for claims 34, 9-10, 12-13, 35 27 and 30) is not whether the features of one reference may be bodily incorporated into the other to produce the claimed subject matter but simply what the combination of references makes obvious to one of ordinary skill in the pertinent art. In re Bozek, 163 USPQ 545 (CCPA 1969).

Contact information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dhiru Patel whose telephone number is 571-272-1983. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean Reichard can be reached on 571-272-2800 ext 31. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published

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applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pairedirect.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

Dhiru Patel

Primary Examiner

Group Art Unit 2831

August 30, 2004

Dhiru Patel
DHIRU A. PATEL
PRIMARY EXAMINER
8/30/04.